

From: Morgan, Jeanette
Sent: Thur 8/20/2015 3:08:24 PM
Subject: FW: Water Law News for August 20, 2015



Water Law News for August 20, 2015

Bloomberg BNA Daily Environment Report™

Climate Change

Antarctic Ice Melt Predictions Covered in Study

Antarctic ice melt could raise global sea levels by as much as 20 centimeters by the end of the century—enough to fill the Caspian Sea—and by close to 50 centimeters by 2200 under a worst-case scenario calculated by researchers...

Drinking Water

Drinking Water Levels of PFOA Unsafe, Group Says

Concentrations of perfluorooctanoic acid (PFOA) found in water systems serving 6.5 million Americans are harmful even though they are below a federal advisory level, according to a report the Environmental Working Group will release Aug....

Elections

Colorado Mine Spill Seeps Into Presidential Race

The spill of 3 million gallons of metals and sediment into Colorado's Animas River gushed into the presidential race conversation, as Republican contender Ben Carson toured the site and promised "a different kind" of Environmental...

Enforcement

Two More Executives Plead Guilty in Elk River Spill

The last of six Freedom Industries executives charged with triggering a 10-day drinking water crisis for 300,000 residents in West Virginia pleaded guilty Aug. 19 in federal court to three pollution charges United States v. Farrell, S.D....

Hydraulic Fracturing

Fracking Ban Cases Sent to Colorado Supreme Court

The Colorado Court of Appeals has sent challenges by the oil and gas industry of two local government hydraulic fracturing bans directly to the state Supreme Court for review (Colo. Oil and Gas Ass'n v. Longmont, Colo. Ct. App., No. 14CA1759,...

Oil & Gas

12 Senators Seek SEC Review of Offshore Drilling Risk Disclosures

Twelve senators opposed to offshore oil and gas drilling sent a letter Aug. 18 to the Securities and Exchange Commission asking the agency to review the risk disclosures of companies engaged in drilling on the Outer Continental Shelf....

Pesticides

USGS Finds Low Levels of Neonics in Numerous Waterways

Low levels of neonicotinoid insecticides were found in almost two-thirds of streams tested by U.S.

Geological Survey researchers, according to a USGS study published online Aug. 18 in the journal Environmental Chemistry....

Water Pollution

Advisory Finally Lifted for Tennessee Creek Segment

A water contact advisory for 1.8 miles of Oostanaula Creek in Athens, Tenn., in place for more than 30 years, has been lifted. In an Aug. 17 announcement, the Tennessee Department of Environment and Conservation said the advisory was posted...

Water Pollution

Animas Spill Highlights Quest for Good Samaritan Bill

The Environmental Protection Agency's accidental spill of historic mining waste into the Animas River could improve chances for the passage of a bill in Congress to encourage good Samaritans to clean up abandoned mines, Sen. Michael...

Water Pollution

Asphalt Oil Maker to Pay for Clean Water Act Violations

A Missouri manufacturer of asphalt oil will pay more than \$200,000 to resolve charges that it violated the Clean Water Act and the Emergency Planning and Community Right-to-Know Act at a facility located next to the Eleven Point River in southern...

Water Pollution

Pavement Sealant Maker Fined \$10M for Discharges

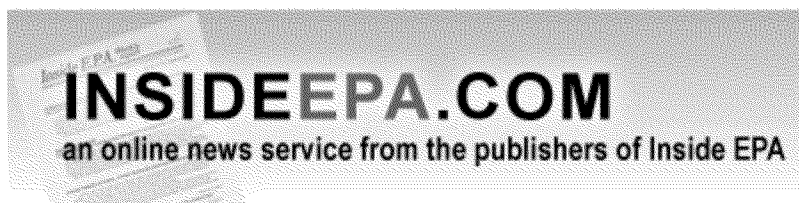
An asphalt sealant manufacturer in Atlanta faces a \$10 million fine for water pollution violations, but a full site cleanup is more likely to result from a related lawsuit still pending against the property owner, according to the plaintiff,...

Water Resources

Plan for Calif. Desalination Plant Called 'Feasible'

An independent evaluation of water intake options for a proposed desalination plant in Orange County, Calif., appears to support a plan by the company developing the project to use existing pipes from an old

power plant to withdraw seawater....



Inside EPA's **Weekly Report**, 08/21/2015

<http://insideepa.com/newsletters/inside-epa>

Latest News

EPA, Pebble Mine Spar Over Resolution Of Clean Water Act Veto FOIA Suit

EPA is sparring with a mining company over how to resolve Freedom of Information Act (FOIA) litigation in which the firm is seeking documents it believes will support its claim that EPA unlawfully "coordinated" with advocates in crafting a veto of the Pebble Mine in Alaska, after a federal judge said EPA's initial FOIA response was largely "adequate."

News Briefs

DOI Will Lead New Investigation Of EPA Colorado Mine Spill

The Department of Interior (DOI) is leading an independent investigation into the causes that led to an EPA cleanup operation's accidental release of 3 million gallons of wastewater containing heavy metals from the Gold King Mine in Colorado.

Greenwire

WATER POLLUTION:

Utah lawmakers say EPA spilled mine sludge on purpose

Published: Wednesday, August 19, 2015

Two Utah lawmakers want the state's attorney general to investigate whether federal officials purposely caused a Colorado mine release that sent 3 million gallons of toxic sludge into a tributary of the San Juan River.

Attorney General Sean Reyes (R) was briefing the Utah Water Development Commission yesterday when

state Sen. Margaret Dayton (R) asked whether U.S. EPA may have breached the Gold King mine to justify a Superfund designation for the site.

State Rep. Mike Noel (R) added that EPA may have caused the release in order to aid environmentalists who want to put a halt to mining.

Though neither lawmaker offered evidence to support their claims, Reyes said he would look into the matter when he meets EPA officials at the Gold King mine today to assess the damage.

Environmental groups quickly blasted the lawmakers' comments as absurd conspiracy theories.

Zach Frankel, the executive director of the Utah Rivers Council, said he faulted EPA for responding slowly to the spill but isn't worried the agency secretly wanted the toxic leak.

"To deliberately cause this would not only violate the Clean Water Act, there would be a whole set of criminal charges that could be filed," Frankel said (Brian Maffly, *Salt Lake Tribune*, Aug. 18). -- **SP**

WATER POLLUTION:

Top chemical execs plead guilty in W.Va. spill

Sam Pearson, E&E reporter

Published: Wednesday, August 19, 2015

Two former top officials of the West Virginia company that operated a chemical storage site that fouled the water for hundreds of thousands of Charleston residents in 2014 pleaded guilty in federal court today, closing the last criminal cases linked to the incident.

Former Freedom Industries President Gary Southern and Dennis Farrell entered guilty pleas at the U.S. District Court for the Southern District of West Virginia earlier today over their roles in the spill, prosecutors said.

Southern, 53, was the public face of Freedom Industries as its leader at the time of the spill. Farrell, 58, was a former Freedom president and owner.

Their actions, prosecutors alleged, led to a spill of a coal-cleaning chemical called 4-methylcyclohexane methanol, or MCHM, into the Elk River, causing more than 300,000 people to go without tap water for days in January 2014.

Southern pleaded guilty to violating the Clean Water Act, negligently discharging refuse matter in violation of the Refuse Act and failing to have a pollution prevention plan. Farrell pleaded guilty to violating the Refuse Act and failing to complete a pollution prevention plan.

"This should serve as a wake-up call to those who operate chemical storage facilities near our precious water resources," said Booth Goodwin, the U.S. attorney for the Southern District of West Virginia. "If you place our water at risk, you face prison time."

Under the plea agreement, prosecutors will drop 12 bankruptcy fraud charges against Southern, the *Charleston Gazette-Mail* reported today. Prosecutors had previously alleged that Southern committed bankruptcy fraud, wire fraud and lied under oath when he allegedly made false statements to the U.S. Bankruptcy Court concerning his role with Freedom Industries (*E&ENews PM*, Dec. 17, 2014).

Southern could face up to three years in federal prison and is scheduled to be sentenced in December.

Freedom Industries and four other officials pleaded guilty to criminal charges earlier this year.

Former Freedom Industries owners William Tis and Charles Herzing pleaded guilty in March to one count of negligently discharging refuse.

Tank farm plant manager Michael Burdette and Robert Reynolds, a former Freedom Industries environmental consultant, were charged with violating the Clean Water Act and pleaded guilty in March.

The four officials will face up to one year in prison when they are sentenced in December.

WATER POLICY:

N.D. judge sets hearing on WOTUS injunction

Published: Wednesday, August 19, 2015

A federal judge in North Dakota has granted a hearing on the effort to block U.S. EPA's Waters of the U.S. rule.

Thirteen states have challenged the rule, which seeks to clarify which waters fall under federal jurisdiction (*Greenwire*, Aug. 11).

The states are hoping for a judge's injunction to suspend the rule, which is set to take effect Aug. 28.

Judge Ralph Erickson has set a hearing for Friday in Fargo.

The states say the rule illegally expands the jurisdiction of U.S. EPA and the Army Corps of Engineers under the Clean Water Act (*Casper [Wyo.] Star-Tribune*, Aug. 18). -- **AW**

COAL ASH:

N.C. urges court to let new law handle Duke ponds

Published: Wednesday, August 19, 2015

North Carolina's environmental regulator asked courts in two counties to allow enforcement cases over Duke Energy Corp.'s coal ash practices to be handled outside court.

The cleanups in each of the 10 cases should instead be determined by the state's Coal Ash Management Act, the Department of Environment and Natural Resources argued.

The state also alleged that if court cases in Mecklenburg and Wake counties are allowed to continue, it would eliminate the public comment period and scientific analysis required by the coal ash law.

The law dictates how Duke's 32 ash ponds are categorized and closed. In December, North Carolina is scheduled to rank the ponds and decide when they should be closed.

"A stay of these proceedings will ensure careful consideration of each of these factors including the economic impacts of the proposed manner of closure, during the process for approval of closure plans," the motions said.

Duke and environmental activists both oppose the move.

Duke says the motion implies that the company sought court action in order to avoid the coal ash law.

"Duke Energy is fully committed to the CAMA process and to closing ash basins in ways that are safe for people and the environment," spokeswoman Paige Sheehan said in a statement yesterday.

By contrast, the Southern Environmental Law Center said having Duke follow the CAMA process would shield the state from releasing information sought by advocates.

"DENR has become a bureaucracy that puts its bureaucratic turf issues ahead of its mission to protect North Carolina's communities and clean water," senior attorney Frank Holleman said in a statement (Bruce Henderson Smith, *Charlotte Observer*, Aug. 18). -- **AW**

BUSINESS:

Investor groups ask big food companies to disclose water woes

Tiffany Stecker, E&E reporter

Published: Wednesday, August 19, 2015

More than 60 institutional investor groups are asking top food companies to do more to disclose business risks tied to drought, floods and other water woes.

The firms sent letters to 15 food companies last week, including Tyson Foods Inc., Dean Foods Co., Archer Daniels Midland Co. and Kraft Heinz Co., based on their relatively low scores in a recent report by nonprofit sustainability organization Ceres ranking corporate performance around water risk management.

Investors "believe that global water risk management is a critical aspect of financial risk oversight in the food and beverage sector," state the letters, which were coordinated by Ceres with support from the Interfaith Center on Corporate Responsibility and the U.N.-supported Principles for Responsible Investment. "These threats can, and already are having profound near-term business impacts on food and beverage companies that are disrupting operations and supply chains, increasing capital expenditures and operating costs, and constraining revenue growth."

Of the 31 publicly traded U.S. companies evaluated by Ceres' report, 90 percent cited water as a risk in their annual filings to the U.S. Securities and Exchange Commission. But only 30 percent said they incorporated water risks in business plans or investment decisions.

"The fact is, there's very little information on what's going on," said Brooke Barton, senior program director for the water program at Ceres.

Specifically, the investors are asking the companies to fill out a questionnaire on water risks to operations from the nonprofit CDP -- formerly known as the Carbon Disclosure Project -- by Sept. 15 or immediately following the next board meeting.

Investor group Calvert Asset Management Company Inc. sent Dean Foods, the country's largest processor of milk, a shareholder resolution earlier this year calling on the company to disclose more information through the CDP questionnaire. The shareholders withdrew the resolution on condition that Dean release an in-depth supply chain assessment around water risks.

Ceres points to one recent example of company losses due to drought: Tyson Foods announced last week that it would close a beef processing plant in Iowa in response to dwindling cattle herds, a result of ongoing drought in the southern U.S. Plains states.

"It's clear for many of these investors that water issues are running into food-sector profitability," Barton said. "All of these companies are running short providing the data that shareholders need."

There has been some positive work lately, advocates say. Field to Market, an alliance of food and beverage companies, conservation groups and government agencies, is working with corporations to collect environmental data throughout the agricultural commodity supply chain, Barton said.

Water risk isn't the only environmental challenge that has investors worried. The humanitarian organization Oxfam America has rallied food companies to improve their methods for measuring greenhouse gas emissions from their operations (*E&ENews PM*, July 8, 2014).

Tyson spokesman Worth Sparkman said the company has reported its water usage in annual sustainability reports for several years. Tyson is currently looking into third-party sources like CDP to improve transparency.

CALIFORNIA:

Growth pits building vs. water restrictions

Published: Wednesday, August 19, 2015

California's building boom has gained steam as the state continues to suffer from drought.

At the same time that municipalities are being forced to cut water consumption, some are also facing huge population expansions.

In Folsom, for example, City Manager Evert Palmer is preparing for 10,200 new homes expected to bring a population increase of nearly 100,000 by 2036.

Palmer said he believes the city can properly manage its water in order to support the expansion. Otherwise, Folsom would be missing out on a huge growth opportunity.

"That would create unnecessary economic hardships here to benefit others," he said. "And while I'm a citizen of the planet, I'm also paid to manage the home team."

Not all in town are excited about the growth.

Planning Board Commissioner Jennifer Lane said building during the drought could be justified if the drought is cyclical.

"I say we are looking at this whole new world here; global warming," Lane said. "Where are we going to get the water? As a planning commissioner, I say let's be prudent. Is this the new normal?"

Folsom is not alone. Across the Sacramento region, more than 280,000 new housing units have been approved as the region's water supply, Lake Oroville, falls to alarmingly low levels. Across the Coachella Valley, planning officials are considering applications for 7,800 new homes in the desert. The state population is expected to increase by 12 million people by 2050.

While the state can set some restrictions on new development, such as the size of lawns and requiring developers to prove that they would have enough water to support such landscaping, local planning boards are often more interested in the potential increase in tax revenues and jobs that development can bring.

"It's very hard to be a local elected official and say no," said Max Gomberg, senior environmental scientist for climate change with the State Water Resources Control Board (Adam Nagourney Smith, [New York Times](#), Aug. 19). -- **AW**

WATER POLLUTION:

Interior to conduct review of EPA mine spill

Phil Taylor, E&E reporter

Published: Wednesday, August 19, 2015

The Interior Department will investigate what caused a U.S. EPA team to accidentally release 3 million gallons of mining waste into southwest Colorado's Animas River earlier this month.

The assessment began yesterday and is expected to wrap up within 60 days, EPA said.

"The goal of DOI's independent review is to provide EPA with an analysis of the incident that took place at Gold King Mine, including the contributing causes," EPA said yesterday.

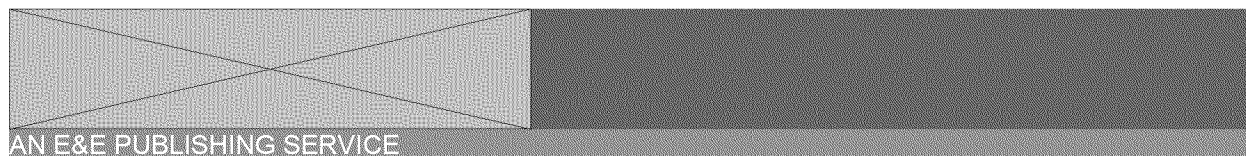
In addition to Interior's review, EPA's Office of Inspector General on Monday told the agency that it plans to research the causes of the Aug. 5 spill as well as EPA's response ([E&ENews PM](#), Aug. 17).

EPA, which has temporarily halted investigation work at shuttered mines and failing facilities nationwide, said both reviews will help inform current and planned site assessments, investigations, and construction or removal projects.

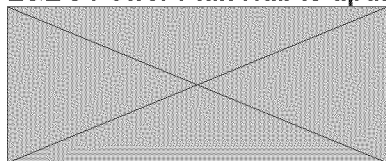
The accident -- triggered by an EPA team investigating contamination at the Gold King Mine near Silverton, Colo. -- released a mustard-colored plume laden with pollutants including arsenic, cadmium, lead and mercury into a tributary of the Animas River, which feeds into the San Juan River in New Mexico and eventually into Lake Powell in Utah.

The accident sparked outrage among EPA's critics, including Republicans, state officials and GOP presidential candidate Ben Carson, who toured the area yesterday.

EPA monitoring has shown pollution levels in the Animas have returned to pre-spill conditions.



E&E's Power Plan Hub is updated



If you haven't checked it out, [E&E's updated Power Plan Hub](#) features revised state goal information, Clean Power Plan fact sheets and summaries of reactions from political leaders, state officials and industry interests. [Go to](#) E&E's Power Plan Hub.

CLIMATEWIRE — Thu., August 20, 2015

 [READ FULL EDITION](#)

1.RESEARCH:

New paper helps define climate change's contribution to the Calif. drought

A new study from climate scientists is the first to identify global warming's contribution to the drought currently ravaging California. The research, published today in *Geophysical Research Letters*, attempts to pinpoint the proportion of California's current drought that is being spurred by human-caused climate change. It finds that man's carbon emissions can be blamed for up to 27 percent of the drought's severity.

2.ADAPTATION:

Typhoons test China's vulnerability to extreme weather

HONG KONG -- After Typhoon Soudelor smashed into China earlier this month and as forecasters watch another powerful storm -- Typhoon Goni -- that could brush its coast this weekend, the question being posed is whether this huge country is prepared for more extreme weather events.

TODAY'S STORIES

3.SCIENCE:

Drought stunts tree growth, leads to slow death in Southeastern forests

4.RESEARCH:

Computer models unveil a mystery: How are North Atlantic hurricanes and Amazonian fires related?

5.PUBLIC OPINION:

Study raises concerns about number of edits on global warming Wikipedia pages

6.EMISSIONS:

Major study finds China's fossil fuel GHGs were overestimated

7.TECHNOLOGY:

New cell taps captured CO2 for a range of clean energy uses

8.NEGOTIATIONS:

Climate deal needs way to increase initial targets to avoid dangerous warming -- report

9.FORESTS:

More than 7M acres of U.S. land hit by wildfires

10.PEOPLE:

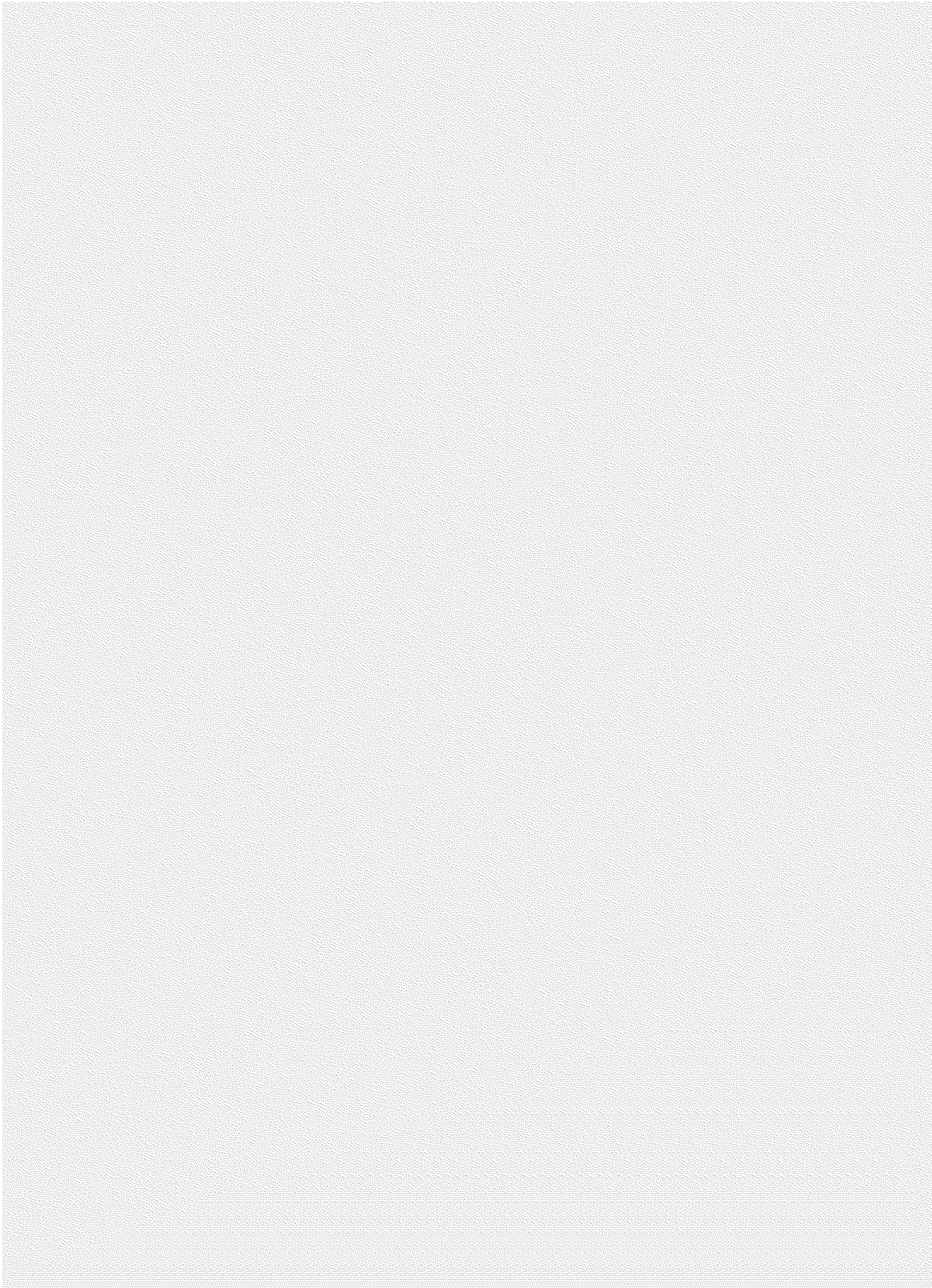
Climate philanthropist George Soros under scrutiny for coal investments

11.FOSSIL FUELS:

Australian government moves to block greens' influence over mining projects

12.NATIONS:

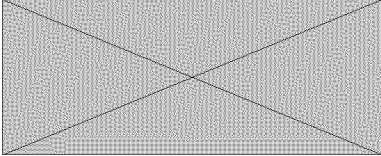
Germany, U.K. disagree on how to meet renewable targets





AN E&E PUBLISHING SERVICE

E&E's Power Plan Hub is updated



If you haven't checked it out, [E&E's updated Power Plan Hub](#) features revised state goal information, Clean Power Plan fact sheets and summaries of reactions from political leaders, state officials and industry interests. [Go to](#) E&E's Power Plan Hub.

ENERGYWIRE — Thu., August 20, 2015

 [READ FULL EDITION](#)

1.NUCLEAR:

Exelon says revamped PJM auction won't spare Quad Cities plant

PJM Interconnection LLC's annual capacity auction will almost certainly mean more revenue for some power plant owners. It will also probably spark renewed outcry from critics who fought new capacity performance standards -- rules aimed at avoiding a repeat of near system collapse related to the 2014 polar vortex.

2.OIL:

With Mexican crude swaps, Obama keeps exports debate at arm's length

Last week, on a quiet Friday in August, news leaked from the U.S. Department of Commerce that it had agreed to a number of crude oil swaps with Mexico, a relaxation of long-standing precedents against any such shipments. The timing of the news, reported by several news outlets and attributed to unnamed department officials, suggests that the Obama administration is not ready to embrace the full public response to new crude oil exports, even as it explores the discretion it has under current law to authorize them.

OIL AND GAS

3.LAW:

Enviros, Interior negotiating settlement in offshore fracking case

4.OIL EXPORTS:

In Denver, bipartisan agreement that ban has 'outlived its usefulness'

5.OIL PRICES:

Federal agency sees crude prices going even lower

6.ALASKA:

Ahead of Obama visit, governor offers a catalog of state concerns

7.OFFSHORE DRILLING:

Lackluster Gulf lease sale shows depths of industry pullback

8.BUSINESS:

Oil minors get better crude prices than big rivals

9.NATURAL GAS:

EPA methane proposal could shutter small drillers -- analysts

ELECTRICITY

10.SECURITY:

GAO reviews rollout of federal cybersecurity framework

11.TRANSMISSION:

New England utility to bury section of controversial power line

12.SOLAR:

A green-energy giant emerges from banking collapse

Brought to you by the Office of General Counsel Law Library

Jennifer Turley, Law Librarian

ASRC Primus Contractor

U.S. Environmental Protection Agency

Office of General Counsel

202/564-3971

turley.jennifer@epa.gov

Tell us how we're doing - rate our customer service!

<http://www.surveymonkey.com/s/epalibsurvey>